

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
JUN 11 2013

OFFICE OF
MANAGING DIRECTOR

Gary Taylor
General Manager
WBNZ
13999 S.W. Bayshore Drive
Traverse City, MI 49684

RE: Fee Waiver and Deferral of Payment (Financial
Hardship; 47 C.F.R. § 1.1164, 1.1166(c) & (e))
Licensee/Applicant: Roy E. Henderson
Station: WBNZ, Facility ID 57414
Fee: Fiscal Year (FY) 2012 Regulatory Fee
Date Request Filed: Sep. 19, 2012
Fee Control No.: RROG 12-00014785

Dear Mr. Taylor:

This responds to Licensee's *Request*¹ for waiver and deferment of the required Fiscal Year (FY) 2012 regulatory fee due for Station WBNZ. For the reasons stated herein, we dismiss Licensee's *Request*, and demand full payment of all delinquent amounts. Until we receive full payment of the fee, late payment penalty,² and charges of collection, additional charges will accrue³ and the Commission will withhold action on and, thereafter, dismiss any pending application.⁴

¹ Letter from Gary Taylor, General Manager, WBNZ, 13999 SW Bayshore Dr., Traverse City, MI 49684 to Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, Marlene H. Dortch, Secretary, FCC, Attn: Office of the Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St. S.W., Room TW-B204, Washington, DC (undated) (rec'd Sep. 19, 2012) (*Request*).

² 47 U.S.C. § 159(c).

³ 31 U.S.C. § 3717; 47 C.F.R. § 1.1940 ("the Commission shall charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717 ... These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.").

⁴ 47 C.F.R. § 1.1910(a)(2) & (3) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or requests for authorization by any entity found to be delinquent in its debt to the Commission ... If a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days of the date of the notice provided pursuant to paragraph (b)(2) of this section, the application or request for authorization will be dismissed.").

Licensee's *Request* was received September 19, 2012, after the date the fee was due,⁵ and without any payment.⁶ Thus, Licensee is delinquent in paying the fee, and under 47 C.F.R. § 1.1164(e),⁷ we must dismiss. This is not the first instance in which we notified Licensee of unpaid delinquent debt. We note that because Licensee failed to pay several other debts,⁸ the Commission is withholding action on all pending applications. This ends the matter; however, as a courtesy, we explain that the *Request* is not properly supported, which is an alternative ground for dismissal and denial.⁹

In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹⁰ The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹¹ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely affect the licensee's ability to serve the public.¹² "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹³ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. It is on this information that the Commission considers on a case-by-case basis whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁴ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

⁵ See FY 20121 Regulatory Fees Due No Later Than September 13, 2012, Eastern Time (ET), *Public Notice*, DA 12-1295 (Aug. 13, 2012), 27 FCC Rcd 9210 (2012).

⁶ 47 C.F.R. § 1.1164(c) ("If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.").

⁷ 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

⁸ Our records show that Licensee is delinquent in paying FY 2008, FY 2009, FY 2010, and FY 2011 regulatory fees (with late payment penalties) and the accrued interest, penalties, and charges of collection. If this information is incorrect, please provide evidence of payment.

⁹ 47 C.F.R. 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

¹⁰ 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

¹¹ 9 FCC Rcd at 5344, ¶ 29.

¹² 10 FCC Rcd at 12761-62, ¶ 13.

¹³ *Id.*

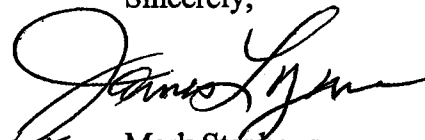
¹⁴ *Id.*

Licensee has the burden¹⁵ of demonstrating that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.¹⁶ Specifically, Licensee failed to meet our standard set forth at 47 C.F.R. § 1.1166 to demonstrate that on "a case-by-case" it has shown "good cause" and that the "waiver [of the required fee] would promote the public interest."¹⁷ Licensee's brief mention of financial information in the body of the *Request* as its effort to contrast items of expense with an item labeled as income is unverified and insufficient.

As we explained earlier, because Licensee is delinquent in paying its debts, under 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940, charges continue to accrue until paid. Licensee should contact the Commission for a valid payoff amount. Furthermore, under 47 C.F.R. § 1.1910,¹⁸ Licensee is subject to the Commission's red light rule, thus the Commission will withhold action on any application filed or pending, and as long as the debts are not paid, or other satisfactory arrangements are not made, any application filed or pending may be dismissed. *See* 47 C.F.R. §§ 1.1108, 1.1109, 1.1116, and 1.1118. Any Commission action taken prior to the payment of delinquent non-tax debt owed to the Commission is contingent and subject to rescission. Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. § 3717. Moreover, the Commission may collect amounts due by administrative offset.¹⁹

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Mark Stephens
Chief Financial Officer

¹⁵ *Id.*; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) ("burden is on the applicant seeking waiver of ... rules to plead specific facts and circumstances which would make the general rule inapplicable"); 47 C.F.R. § 1.1166. *See Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."). *See also* 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."); *Tucson Radio, Inc. v. FCC, supra*; 47 C.F.R. § 1.3.

¹⁷ 47 C.F.R. § 1.1166.

¹⁸ 47 C.F.R. § 1.1910 (b).

¹⁹ 47 C.F.R. § 1.1912.